

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 57 OF 2001.

Fayaz Sangloo,
presently lodged at
Central Jail, Aguada.

... Appellant.

Versus

State of Goa represented
by Officer-in-Charge,
A.N.C. Police Station,
Police H.Q., Panaji.

... Respondent.

Mr. J.P. D'Souza with Ms. C. Collasso, Advocates for
the Appellant.

Mr. S.N. Sardessai, Public Prosecutor for the
Respondent/State.

Coram : P.V. HARDAS, J.

Date : 1st August 2003.

ORAL JUDGMENT.

The appellant/accused, who stands convicted for an offence punishable under Section 20(b)(ii) of the N.D.P.S. Act and sentenced to suffer rigorous imprisonment for a term of 5 years and to pay fine of Rs. 50,000/- in default to undergo imprisonment for one year, by the Special Judge, N.D.P.S. Court, Mapusa, by Judgment, dated 24th October 2001, in Special Criminal Case No. 3 of 2000, has filed the present appeal challenging the aforesaid conviction and sentence.

2. The facts as are necessary for the decision of the appeal are set out hereunder:-

On 10th December 1999, at about 7.00 p.m.,

P.W.5 P.I. Uday Naik, who was attached to the Anti Narcotic Cell Police Station, Panaji, received a specific and reliable information that one Kashmiri named Fayaz Ahmad Sangloo would be coming near the Rajesh Bar and Restaurant at Baga, Calangute, between 9.30 to 10.30 p.m. for delivering consignment of charas to his customers. On receipt of the said information, P.W.5 P.I. Uday reduced the said information in writing and handed over a copy thereof to the Deputy Superintendent of Police Shirish Thorat (P.W.6). Exhibit 16 Colly is the copy of the said information alongwith a letter which was received by P.W.6 Deputy Superintendent of Police Shirish from P.W.5 P.I. Uday. P.W.5 P.I. Uday, thereafter, secured the presence of two panch witnesses, namely, P.W.3 Gurunath P. Naik and P.W.4 Nitin Dhond. The said two panch witnesses were informed by P.W.5 P.I. Uday regarding the contents of the information which he had received and the panch were also informed that P.W.5 P.I. Uday had sent a copy of the said information to P.W.6 Deputy Superintendent of Police Thorat. Both, P.Ws. 3 Naik and 4 Dhond agreed to act as panchas. The panchas were then introduced to the members of the raiding party, which consisted of P.W.6 Deputy Superintendent of Police Thorat, P.W.7 P.I. Lavu Mamledar and other police constables of the Anti Narcotic Cell, Police Station, Panaji. The raiding party, including the panchas, left the police station

and proceeded to Baga-Calangute at about 8.45 p.m. in private vehicles. The raiding party had carried with them a kit box containing weighing, packing, sealing materials, torches, etc.. P.W.5 P.I. Uday carried with him the seal of Anti Narcotic Cell, Panaji, Goa-2 with Ashoka Emblem. The raiding party reached near Rajesh Bar and Restaurant at about 9.15 p.m. and remained inside the vehicles. P.W.5 P.I. Uday alighted from the vehicle and returned after 15 minutes and informed the panchas and the members of the raiding party that the informant had pointed out the said Fayaz Ahmad Sangloo. At about 9.55 p.m., the raiding party noticed two Kashmiri persons coming towards the main road near Rajesh Bar and Restaurant. Both the persons were talking to each other. P.W.5 P.I. Uday pointed towards the said Fayaz Ahmad Sangloo, who was carrying a bag in his left hand. The members of the raiding party alighted from the vehicles and surrounded both the Kashmiri persons. P.W.5 P.I. Uday identified himself as a PSI of the Anti Narcotic Cell, Police Station. P.W.5 P.I. Uday then inquired with the Kashmiri person, who was carrying a bag in his hand, his name and address and the said person disclosed his name as Fayaz Ahmad Sangloo. The said person Fayaz Ahmad Sangloo has been identified during the trial as the present appellant/accused. The second person was asked his name and disclosed it as Ashik Ahmad Sangloo. P.W.5 P.I.

Uday then introduced the members of the raiding party including the panchas to both the accused. P.W.5 P.I. Uday apprised them that he had received specific and reliable information that the appellant/accused would deliver a consignment of charas to his customers and, therefore, expressed his desire to take the personal search of the appellant/accused. Before commencing the search P.W.5 P.I. Uday informed the appellant/accused that he had a right of being searched before either a Gazetted Officer or a Magistrate. The appellant/accused declined the said offer. He was also informed that he had a right to search the raiding party, which offer was also declined by the appellant/accused. Thereafter the personal search of the appellant/accused was taken. He was requested to hand over the bag which he was carrying in his hand. During the search of the said bag a blackish colour substance in different sizes and shapes was found. On examining the said substance, P.W.5 P.I. Uday informed the raiding party that the said substance was suspected to be charas. There were 33 pieces. All the pieces of charas together with the cotton bag were weighed and were found to weigh 721 grams. The said bag alongwith the charas was put in an envelope and the envelope was packed and sealed with 7 seals of Anti Narcotic Cell, Panaji, Goa with Ashoka Emblem. The said envelope was signed by P.W.5 P.I. Uday and both the panchas. However the accused refused to sign on the

envelope. During the personal search of the appellant/accused, cash of Rs. 4,000/- was found in his left hand side pant pocket. The said cash of Rs. 4,000/- was put in an envelope and was packed and sealed in similar manner as the packing and sealing of charas. Thereafter the other person was searched and in respect of whom a separate charge-sheet has been filed.

3. The appellant/accused was informed that possession of charas was an offence under the N.D.P.S. Act and was asked to produce documents regarding possession. Since the appellant/accused could not produce any documents, he was explained the grounds of arrest and was taken in custody alongwith the other accused. The search of the members of the raiding party was again offered to the accused, who declined to search the members of the raiding party. A panchanama of the entire sequence of events was drawn and the same is at Exhibit P.W.3/A and the Seizure Report is at Exhibit P.W.3/B. After returning to the Anti Narcotic Cell, Police Station, P.W.5 P.I. Uday lodged his complaint at Exhibit 13 and handed over the seized property alongwith the seal, under a separate letter, to P.W.7 P.I. Mamledar. The letter handing over the property is at Exhibit 14. He had also handed over a separate letter containing the specimen seal impressions. The letter forwarding the samples for analysis is at Exhibit

P.W.1/A. He then sent the intimation under Section 57 of the N.D.P.S. Act to P.W.8 I.D. Shukla is at Exhibit 15.

4. The seized drugs were forwarded for chemical analysis by P.W.7 P.I. Mamledar. P.W.2 Manohar Joshi, on 11th December 1999, received a letter addressed to Superintendent of Police, C.I.D. by P.I. A.N.C. Panaji. The said letter is at Exhibit P.W.2/A. P.W.2 Manohar acknowledged on the said letter regarding the receipt of the samples. He kept the samples in a steel cupboard under lock and key and then forwarded the samples on 13th December 1999 through Police Constable Buckle No. 3994 for examination. P.W.1 Mahesh Kaissare examined the sealed samples. He had received the covering letter at Exhibit P.W.1/A and the specimen seal impression letter at Exhibit P.W.1/B. By his report at Exhibit P.W.1/C he opined that the substance that was examined by him tested positive for charas.

5. After completion of the investigation a charge-sheet against the present appellant/accused came to be filed. The learned Special Judge, vide Exhibit 7, framed a charge against the appellant/accused for an offence punishable under Section 20(b)(ii) of the N.D.P.S. Act. The appellant pleaded not guilty and claimed to be tried. The prosecution in support of its

case examined 8 witnesses.

6. Mr. D'Souza , the learned counsel appearing on behalf of the appellant/accused, has urged before me that P.W.3 Naik and P.W.4 Dhond cannot be relied upon as both the panch witnesses are stock witnesses of the police and a perusal of their evidence would show that they were not present at the scene of offence when the alleged substance came to be seized. He next urged before me that there are discrepancies in the evidence of P.W.4 Dhond and P.W.5 P.I. Uday and as such it is not safe to accept the evidence of the Police Officer to sustain the charge against the appellant/accused. He has also urged before me that there was no evidence of safe custody of the drugs that were seized inasmuch as according to P.W.5 P.I. Uday, he had deposited the drug alongwith the seal with P.W.7 P.I. Mamledar and, thus, P.W.7 P.I. Mamledar was entrusted with the property as well as the seal and, therefore, the possibility of the sample having been tampered with cannot be ruled out. He has also urged before me that there are certain inherent aspects of the prosecution case which render the version of the prosecution as doubtful.

7. Mr. Sardessai, the learned Public Prosecutor appearing on behalf of the respondent/State, has urged before me that even if the evidence of P.W.3 Naik and

P.W.4 Dhond is discarded the evidence of P.W.5 P.I. Uday is corroborated by the documents on record and there is no material to discredit the version of P.W.5 P.I. Uday. He has also stated that there is no material which has been brought forth in the cross-examination to even remotely suggest that the samples had been tampered with. P.W.7 P.I. Mamledar was the Officer-in-Charge of the Police Station and P.W.5 P.I. Uday had deposited the samples and the seal with him. P.W.7 P.I. Mamledar had immediately taken a note of the samples in the muddemal register and the samples were then kept in safe custody. Thus, according to the learned Public Prosecutor, there is no possibility, not even remote possibility, of the samples having been tampered with.

8. The learned Single Judge of this Court in **Gregoire Mounier v. State**, 2001 (1) Goa L.T. 450 has held P.W.3 Gurunath Naik to be a stock witness of the police. P.W.3 Naik in his cross-examination has admitted that he was knowing P.S.I Uday Naik three years before when P.S.I. Uday Naik was working in the traffic cell, Panaji. He has further admitted that he may have deposed in four or five cases under the N.D.P.S. Act. He has also admitted that he has deposed as a panch witness in the case of a French National Gregoire Mounier. Since the learned Single Judge of this Court

had held P.W.3 Gurunath Naik to be a stock witness of the police, it would be extremely unsafe to accept his testimony. The prosecution has examined P.W.4 Dhond. P.W.4 Dhond has stated about the seizure of the drugs and in the cross-examination has stated that he was residing at Kundaikar Nagar, Panaji, and doing the business of painting and also stationery. He has admitted that he may have acted as a panch in one or two cases prior to this case. In further cross-examination he has admitted that it is possible that he may have acted in five criminal cases other than drug cases. He has admitted that he has deposed in Panaji Court in at least three cases. he has further admitted that he knows P.S.I. Naik, since his childhood as they used to play volleyball together.

9. In the cross-examination he has admitted that when he saw the accused for the first time he was coming out from the lane which was on right hand side of the road and at a distance of about 20 metres approximately from where they had parked. He has further stated that the accused had almost come out of the lane and reached the main road when he saw him for the first time. He has further admitted that the search of the accused was made on the Baga-Calangute main road in front of the vehicle. He has further stated that the process of weighing, packing and sealing of the attached articles

was not done in the vehicle and the entire process was done on the road by sitting on a stone. None of this process was done in the lane.

10. P.W.5 P.I. Uday in his cross-examination has admitted that he knows P.W.4 Dhond as he was a panch in an earlier drug case. To the question that he knew P.W.4 Dhond since his childhood as they used to play volleyball together, the witness replied that he does not recall. P.W.5 P.I. Uday has admitted that P.W.4 Dhond had acted as a panch in four to five drug cases in which he has been the Investigating Officer of the Anti Narcotic Cell, Panaji. He has further admitted that the vehicle was parked near Rajesh Bar and Restaurant on the main road Baga-Calangute. The vehicle was parked just at the entrance of the lane near Rajesh Bar and Restaurant and the lane is on the left hand side of Baga road. He has further admitted that the search of the accused was taken in the lane itself and the recording of the panchanama commenced in the lane near Rajesh Bar and Restaurant. He has further admitted that the weighing, packing and sealing and all related matters was done in the said lane where the accused was accosted, which was about 40-50 metres from the main road.

11. It is true that P.W.4 Dhond appears to have

acted as a panch witness in about four to five cases under the N.D.P.S. Act. It also appears that P.W.4 Dhond was known to P.W.5 P.I. Uday. Merely because he had appeared on a number of occasions as a panch would not be a ground in this case to disbelieve his evidence completely. It is true that there is a slight discrepancy in the evidence of P.W.4 Dhond and P.W.5 P.I. Uday. P.W.4 Dhond states that the accused was arrested near the main road and the search of the accused, the recording of the panchanama, the seizure and sealing etc., were done on the main road while P.W.5 P.I. Uday states that the accused was accosted at a distance of about 40-50 metres from the main road at which place the search and seizure were effected. This slight discrepancy, according to me, is not enough to come to the conclusion that the evidence in respect of the search and seizure as well as the sealing of the drugs is rendered doubtful. The Court has to separate the grain from the chaff. The discrepancy regarding the place where the accused was arrested and where the drugs were seized is extremely minor. The entire prosecution case cannot be jettisoned on this ground. In the event of discrepancy in the evidence between the panch witness and the Seizing Officer, the Court has to see whether the version of the Seizing Officer is rendered doubtful. In the present case there is nothing in the cross-examination of P.W.5 P.I. Uday which would impel

the Court to draw an inference that what is stated by P.W.5 P.I. Uday is without a grain of truth. Therefore, according to me, the discrepancy regarding the place where the accused was searched and the drugs were seized is of no consequence and no benefit can be derived by the appellant/accused.

12. According to P.W.5 P.I. Uday, after sealing of the samples, he had deposited the same alongwith the seal in the safe custody of P.W.7 P.I. Mamledar. P.W.7 P.I. Mamledar in his evidence states that he had received the samples and the seal and had entered the property in the muddemal register. He further states that he had forwarded the two envelopes to the Scientific Assistant. P.W.2 Manohar states that on 11th December 1999 he had received the sample drug in a sealed condition. P.W.1 Kaissare, who had analysed the drug, had noticed the seals intact and tallying with the specimen seal impression. In the cross-examination P.W.7 P.I. Mamledar has admitted that he had personally not forwarded the two sealed envelopes to the Scientific Assistant. The submission of the learned counsel for the appellant/accused that the possibility of the samples having been tampered with cannot be ruled out, in view of the fact that P.W.7 P.I. Mamledar was entrusted with the muddemal property and the seal, thus, cannot be accepted. P.W.7 P.I. Mamledar had received

the muddemal property in a sealed condition and had immediately entered it in the muddemal register and on that very day itself had forwarded it to P.W.2 Manohar. P.W.5 P.I. Uday had deposited the seal with P.W.7 P.I. Mamledar, who was the Officer-in-Charge of the Police Station. Had the seal remained with P.W.5 P.I. Uday and there was no evidence regarding the safe custody of the samples or if the samples and the seal remained in the custody of P.W.5 P.I. Uday, then, perhaps, legitimately an inference could be drawn that there was a possibility of the samples being tampered with. In the present case P.W.5 P.I. Uday had divested himself of both the muddemal property and the seal, which were in the custody of P.W.7 P.I. Mamledar, who had, on the same day, forwarded it to P.W.2 Manohar. Moreover, in the cross-examination of P.W.7 P.I. Mamledar it was not suggested that he had tampered with the seal of the muddemal property. The accused also appears not to have taken any such defence in his statement under Section 313 Criminal Procedure Code. Merely because the seal and the muddemal property were in the possession of P.W.7 P.I. Mamledar, who no doubt was a member of the raiding party, an inference that he had tampered with the muddemal property cannot be drawn. In this behalf Mr. D'Souza has placed reliance on the Judgment of a learned Single Judge of this Court in **Koyappakalathil Ahamed Koya v. A.S. Menon and another**, 2002 CRI.L.J.

4502. In the aforesaid Judgment, the learned Single Judge has sounded a word of caution that the property should not be entrusted for safe-keeping to the Officer who also has the custody of the seal as the said Officer would have an opportunity to tamper with the seals. In the present case it must be remembered that the Seizing Officer was P.W.5 P.I. Uday. P.W.7 P.I. Mamledar, who had accompanied and was a member of the raiding party, had no positive role to play during the raid. He is the Officer who had received a copy of the prior information received by P.W.5 P.I. Uday. However, the prosecution in future should always endeavour to see that the property is deposited separately and the seal is entrusted to an Officer from whose custody it was taken for the purpose of raid. Precaution ought to be taken by the prosecution to ensure that the muddemal property and the seal for safe-keeping is not entrusted to the same Officer. However, since I have already come to the conclusion in this case that despite the fact that the muddemal property and the seal had been entrusted to the same Officer, there is no possibility of the samples being tampered with, the submission on behalf of the appellant is rejected.

13. The learned counsel for the appellant/accused then urged before me that, admittedly, at the time of the raid, the raiding party consisted of two constables

who were in uniform and, according to the prosecution, they had walked towards the accused. According to the learned counsel for the appellant/accused, it is highly unnatural that on seeing the constables in uniform, the appellant/accused would like a fly walk into the web of the spider. According to the learned counsel for the appellant/accused, in normal course the accused, who was in possession of drugs, would have taken to his heels. The re-action of different persons to the same situation is always different. One never knows the reason as to why the accused chose to walk in the manner hinting that there was nothing wrong with him. Possibly he had thought that if he had resorted to flight, the police officers would chase him. Possibly the accused had no means of knowing that a prior information had been communicated to P.W.5 P.I. Uday regarding the accused being in possession of the huge quantity of charas. Be that as it may, on this aspect the prosecution case cannot be doubted nor can it be concluded that no drugs had been seized.

14. The learned counsel for the appellant/accused then urged before me that the Crime Number is mentioned on the envelope which contained the muddemal property. According to the learned counsel for the appellant/accused, if the muddemal property was seized at the scene of offence and the contents of the envelope

was written on the scene of offence itself, renders the version of sealing of the muddemal at the scene doubtful. However, P.W.5 P.I. Uday in his cross-examination has stated that he was aware about the last Crime Number which was registered in the Police Station before he left for the raid. Therefore, he had put the next Crime Number on the envelope. It is true that he has admitted in the cross-examination that there was a possibility of a Superintendent of Police or a Deputy Superintendent of Police registering the offence under the N.D.P.S. Act at the police station. Merely on the basis of this admission, it cannot be urged that putting of the Crime Number on the envelope is a factor which should impel the Court to draw an inference that the sample was not seized at the scene of offence but was done in the police station. The explanation for putting the Crime Number was sought in the cross-examination and that explanation has not been further demonstrated to be false.

15. The learned counsel for the appellant/accused has not challenged the non-compliance of Section 50 of the N.D.P.S. Act. The conviction is challenged only on the aforesaid points, which have been dealt with by me. After giving my anxious consideration to the evidence on record, according to me, the learned trial Court has rightly convicted and sentenced the appellant/accused

for the offence under Section 20(b)(ii) of the N.D.P.S. Act. There is no perversity in the reasoning of the learned trial Court to warrant any interference in the present appeal.

16. Criminal Appeal is dismissed. Ten weeks time is granted to the appellant/accused to surrender. His bail bond stands cancelled.

(P.V. HARDAS)
JUDGE.

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